



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
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# Press Release

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## FOR IMMEDIATE RELEASE

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### **Attorney General Darrell McGraw's Investigation Hijacked**

Attorney General Darrell McGraw announced today an important court decision in his investigation of credit card practices.

In 2005, after receiving 264 complaints against Capital One Bank and Capital One Services concerning their credit card activities, General McGraw issued subpoenas seeking certain documents from them. Capital One Bank and Capital One Services failed to comply with the subpoenas, requiring the Attorney General to file a petition to enforce the subpoenas. In 2007, the Honorable Judge Hoke, Circuit Judge of Lincoln County, ordered Capital One Bank and Capital One Services to provide the requested information. This order was appealed to the West Virginia Supreme Court of Appeals, which ordered a stay of Judge Hoke's order pending consideration of the appeal.

On March 1, 2008, Capital One Bank converted to a national bank, regulated by the Office of Comptroller of Currency ("OCC"), which has sole authority to inspect or require the production of documents from a national bank. Capital One Bank and Capital One Services filed suit in federal court in 2008 seeking a ruling that the Attorney General could no longer pursue his investigation of them.

The Honorable Joseph Goodwin ruled that McGraw's investigation of Capital One Services could continue. However, the Court determined that Attorney General McGraw no longer has authority to pursue his investigation of Capital One Bank. The Court made it clear, however, that although its ruling as to the bank is required by federal law, Congress should consider allowing both state and the federal government to enforce laws designed to protect people from abusive and misleading credit card practices. The Court wrote:

While I find that federal law requires this result, I am sympathetic to the [Attorney General], whose lawful investigation was hijacked by Capital One's conversion to a national bank. . . . Moreover, it is questionable whether the OCC will be as motivated or as effective in protecting the consumers of West Virginia as is the West Virginia Attorney General.

Attorney General McGraw says, "West Virginia consumer law has strong protections for consumers. The maximum late fee that can be charged on a credit card is 5% of the unpaid balance, but not more than \$15; the maximum over-limit fee is 2% of the credit limit or \$10, whichever is less. However, the OCC and the courts have deemed most state consumer protection laws unenforceable against national banks. Many national banks now have late fees and over-limit fees of \$30 or more. Until Congress decides to take action, states are powerless to protect consumers who are charged such unlawful fees. There are currently several bills pending in Congress that would correct some of the worst credit card abuses. I strongly recommend that consumers write their Congressmen and Senators to urge passage of such reforms. Consumers Union has summaries of all these bills on its website."

A full copy of Judge Goodwin's opinion can be found at

www.wvsc.uscourts.gov/district/opinions/pdf/CapitalOne08Civ165.pdf. For more information about credit card reform bills pending in Congress, go to [www.consumersunion.org/pdf/CreditCardBills07.pdf](http://www.consumersunion.org/pdf/CreditCardBills07.pdf), or to file a complaint with the Attorney General's Office, call 1-800-368-8808 or download a complaint form from the website at [www.wvago.gov](http://www.wvago.gov). To view the related Court Order regarding Capital One, [click here](#).

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